

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MEMORANDUM AND ORDER

YANDLE, District Judge:

Defendants filed a Suggestion of Death for Defendant James Claycomb (Doc. 87).

Accordingly, the Court entered an Order requiring the filing of a motion to substitute within 90 days (Doc. 88). Now pending before the Court is Plaintiff's Motion for Substitution of Defendant (Doc. 90).

The Court has authority pursuant to Federal Rule of Civil Procedure 25(a) to substitute the proper party when a claim survives the death of a defendant. *Anderson v. Romero*, 42 F.3d 1121, 1123-1124 (7th Cir. 1994) (survivorship may be appropriate in Section 1983 action). Relatedly, under Federal Rule of Civil Procedure 25(d), “[a]n action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer’s successor is automatically substituted as a party.” *Id.*

Here, whether *F.R.C.P.* 25(a) or 25(d) applies depends on whether Plaintiff seeks to substitute a party with respect to an individual capacity claim against Defendant Claycomb or an official capacity claim based on his conduct as the former senior chaplain of Menard Correctional Center. While Plaintiff does not specifically state whether he is suing Claycomb individually or

in his official capacity (Doc. 30, p. 2; Doc. 82, p. 3), he alleges discrimination by officials and chaplains at Menard against “Muslims practicing the religious faith of Islam” (Doc. 30, p. 6), which implicates an official capacity claim. *See Brandon v. Holt*, 469 U.S. 464 (1985).

Because Chaplain Samuel Sterrett (Claycomb’s successor) has already appeared in this action, substitution is not necessary. Defendant Claycomb shall instead be **DISMISSED without PREJUDICE**. Plaintiff’s Motion for Substitution (Doc. 90) is **DENIED**.

IT IS SO ORDERED.

DATED: January 13, 2023



STACI M. YANDLE
United States District Judge